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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.H., a Person Coming Under the
Juvenile Court Law.

B168940
(Los Angeles County
Super. Ct. No. CK46242)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHAEL H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court for Los Angeles County, David Doi, Judge. Affirmed in part and reversed in part.

Tyna Thall Orren, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Larry Cory, Assistant County Counsel, William D. Thetford, Senior Deputy County Counsel, and Pamela Landeros, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In this dependency appeal, Michael H. (Father), the father of N.H., appeals from an order of the juvenile court terminating juvenile court jurisdiction over N.H. and making a family law order under Welfare and Institutions Code¹ section 362.4. Father contends that the family law order is internally inconsistent in that it provides on one page that Father is to have no visitation with N.H. but on another page it provides for monitored visitation under certain conditions, while the juvenile court's oral pronouncement provided for monitored visitation under different conditions. Father also contends that the juvenile court abused its discretion by terminating jurisdiction. We hold that the family law order is void for uncertainty, but that the juvenile court did not abuse its discretion when it terminated jurisdiction, particularly in light of Father's attorney's concession that the conditions that justified the court's assumption of jurisdiction no longer existed. Accordingly, we reverse the family law order as it pertains to Father's visitation rights and affirm the order terminating juvenile court jurisdiction.

BACKGROUND

N.H. came to the attention of the Los Angeles Department of Children and Family Services (the Department) in August 2001, when the Department received reports that N.H., who was almost four years old, had been exposed to domestic violence between her parents and that she had been sexually abused by Father. N.H.'s parents were divorced; she lived with her mother, T.S. (Mother), and Father had unmonitored visitation rights.

On September 6, 2001, the Department filed a petition under section 300 based upon the reports it received, alleging among other things that Mother and Father failed to protect N.H. by exposing her to violent confrontations between them and that Father sexually abused N.H. The child was detained with Mother. The sexual abuse allegations

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

eventually were stricken, and the amended petition was sustained on December 7, 2001. At the December 7, 2001 hearing the juvenile court ordered that Father, who had had monitored visitation with the child since the petition was filed, was to have unmonitored day visits once a week for four weeks, after which he would be allowed unmonitored overnight weekend visits.

Almost four weeks later, on January 2, 2002, the Department received a report that Father had sexually and physically abused N.H., and on January 7, 2002, the Department filed a subsequent petition under section 342. At the detention hearing on the new petition, the juvenile court ordered that Father's visits be monitored. Following a hearing on June 21, 2002, the juvenile court dismissed the section 342 petition for insufficient evidence. Among other things, the court ordered Mother, Father, and N.H. to participate in individual counseling and Mother and Father to complete a Parents Beyond Conflict program, and ordered unmonitored visits for Father one day per week and unmonitored weekend visits every other weekend.

In a status review report filed December 20, 2002, the Department reported that Father was not doing well in therapy and that Mother had complied with all court ordered services and was doing well in therapy. The Department recommended that the juvenile court terminate jurisdiction under section 364 and order that Mother be granted sole physical and legal custody of N.H. and that Father's visits with N.H. be monitored until Father's therapist approved unmonitored visitation. The juvenile court continued the matter for a contested hearing on the Department's recommendations, but ordered that Father's visits be monitored in the interim.

After leaving the hearing on December 20, 2002, Father went to the office where he had been receiving therapy and was disruptive. He was asked to leave the office and he complied, but he made a veiled threat upon leaving. Father then went to the Department's office and was verbally abusive to the staff. Three days later, Father was

arrested and charged with felony kidnap with intent to commit rape after he got into an altercation with a woman with whom he was visiting.²

Father was incarcerated until January 23, 2003. Four days after he was released from jail, and despite the juvenile court's order that his visits were to be monitored, Father went to N.H.'s school and asked to see her. The Department then filed an ex parte application for an order modifying the visitation order to limit Father's visitation to the Department's office with a guard present and to order Father to have no contact with N.H. except during these monitored visits. The juvenile court granted the application and modified the visitation order as requested.

At a review hearing on April 28, 2003, the Department once again recommended that juvenile court jurisdiction be terminated under section 364 on the ground that N.H. and Mother were continuing to do well in therapy, and also asked that Father's visitation continue to be monitored until a licensed psychotherapist recommended otherwise. N.H.'s attorney, however, argued that it would be in N.H.'s best interest for the court to continue its jurisdiction to give Father one last opportunity to address the issues that led to the juvenile court's assumption of jurisdiction. The court agreed with N.H.'s attorney, finding that continued jurisdiction was necessary because the conditions that required the court to assume jurisdiction still existed. The court admonished Father to cooperate and continue in therapy. The review hearing was continued for six months, with a progress hearing set in three months, on July 28, 2003.

On July 28, 2003, the Department reported that Father continued to refuse to cooperate with the Department and continued to violate court orders. Therefore, the Department once again recommended that juvenile court jurisdiction be terminated and that Mother be given sole physical and legal custody of N.H., with monitored visitation by Father until his therapist and N.H.'s therapist approve unmonitored contact.

² The felony charge later was reduced to two misdemeanor sexual battery counts and ultimately was dismissed when the witnesses could not be located.

At the July 28, 2003 progress hearing, Mother's attorney agreed with the Department's recommendation and submitted a proposed family law order purportedly in accordance with that recommendation. Father's attorney asserted that the Department's report incorrectly stated that he had not enrolled in individual therapy, and provided the court with a letter from Father's therapist in which the therapist stated that Father had committed to a therapeutic plan that included a year of individual therapy, among other things.³ Father's attorney argued that jurisdiction should not be terminated, so as not to damage Father's relationship with N.H. But the attorney also stated that there no longer was a risk of domestic violence, which was the condition that led to the court's assumption of jurisdiction. N.H.'s attorney disagreed that there no longer was a risk of domestic violence, but agreed with the Department and Mother that Father seemed unwilling to fully cooperate with the case plan.

The juvenile court found that jurisdiction no longer was necessary because N.H. was in a safe and nurturing home with Mother. Therefore, the court terminated jurisdiction, ordered that Mother was to have full legal and physical custody, and stated, "The visitation of the Father shall remain the same as it is today, as previously ordered." At the time of the progress hearing, Father had monitored visits at the Department's office with a guard present and was ordered to have no other contact with N.H. However, the "Custody Order—Juvenile Final Judgment" filed on July 28, 2003 (the July 28 order) provides on page one that Father is to have no visitation, while the attached "Visitation Order—Juvenile" states that Father will have "visitation monitored by a professional monitor after father's psychotherapist and minor's psychotherapist agree to allow it," and the minute order for the July 28, 2003 hearing states "NO VISITATION

³ The therapist's letter stated that Father was seen for an intake interview on July 10, 2003—i.e., two and a half months after the previous hearing in which the three-month progress hearing was set—and that as of the date of the letter (July 24, 2003) Father had attended four group therapy sessions but no individual therapy sessions.

BY FATHER AS STATED IN THE ATTACHMENT IN THE CUSTODY ORDER DATED THIS DATE.”

Father, in propria persona, filed a notice of appeal from the July 28 order on the day the order was entered.

DISCUSSION

A. Father’s Appeal Is Not Moot

On August 6, 2003, the Department filed in the juvenile court a motion for reconsideration of the family law order. The motion stated that the order is internally inconsistent, and asked the juvenile court to set aside its July 28 order and enter a new order providing that Father is to have monitored visits, to be monitored by a professional monitor, and that Father is not to have unmonitored contact with N.H. until approved by his therapist and N.H.’s therapist. At a hearing not attended by Father, the juvenile court appointed counsel for Father and, based upon that attorney’s stipulation, granted the Department’s motion, vacated the July 28 order, and entered the new order on August 20, 2003 (the August 20 order).

After the opening brief was filed in this appeal, the Department moved in this court to dismiss Father’s appeal as moot in light of the August 20 order vacating the July 28 order. Father opposed the Department’s motion, arguing that he had not been given notice of the August 20 hearing and he did not know about the hearing or the order until he received the motion to dismiss the appeal, and that he did not authorize anyone to stipulate to vacate the July 28 order and enter the August 20 order. We appointed the Honorable David Doi, Judge of the Los Angeles Superior Court and the judicial officer who made the July 28 and August 20 orders, to act as a referee to take evidence and make factual findings regarding whether Joseph Wick, who was appointed to represent Father at the August 20 hearing, was legally authorized to enter into the stipulation to vacate the July 28 order and enter the August 20 order.

Judge Doi held an evidentiary hearing at which Father and Mr. Wick both testified. Judge Doi found that Father was not informed by his attorney or any other person that a motion had been made to modify the July 28 order, that Father did not authorize Mr. Wick to act on his behalf to modify the July 28 order, and that Mr. Wick was not legally authorized to prosecute a modification of the July 28 order on behalf of Father.

Upon receiving Judge Doi's findings of fact, we denied the Department's motion to dismiss the appeal. In light of Judge Doi's finding that Mr. Wick was not legally authorized to enter into the stipulation to vacate the July 28 order and enter the August 20 order, the August 20 order entered by stipulation of Mr. Wick is invalid.⁴ (See *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404, 405.) Thus, this appeal has not been rendered moot by the August 20 order.

B. The Family Law Order is Void

Father argues on appeal that the July 28 order, insofar as it purports to set forth Father's visitation rights, must be reversed. He is correct. As noted above, the July 28 family law order is internally inconsistent. Indeed, the Department has acknowledged the inconsistency, both in its respondent's brief filed in this court and in its August 6, 2003 motion for reconsideration filed in the juvenile court. A judgment or order that is not "sufficiently clear and definite to enable a party to comply with its requirements" is void. (*Johnson v. Farmer* (1940) 41 Cal.App.2d 874, 882; see also 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 42, p. 574.)

Despite the Department's concession that the family law order is internally inconsistent and *requires* modification, the Department argues in its respondent's brief

⁴ By separate order filed this day, we have denied as moot Father's petition for writ of habeas corpus in which Father challenges the August 20 order.

that Father failed to appeal from that order and that he waived his right to appeal from it by failing to object to it in the trial court. We disagree.

The July 28 order is a single order, terminating jurisdiction and purporting to set forth Father's visitation rights. Although Father's form notice of appeal is confusing because he has checked a box indicating he is appealing from the termination of his parental rights under section 366.26—a statute not at issue in this case—he also attached a portion of the Department's interim review report for the July 28, 2003 hearing, with the portion of the report with the Department's recommendations circled and with the notation "notice of appe[a]l." Construing this notice of appeal liberally in accordance with California Rules of Court, rule 1, subdivision (a), we hold that it is sufficient to challenge the visitation portion of the July 28 order.

As for the Department's assertion that Father waived his right to appeal from the visitation portion of the July 28 order because he failed to object to it in the juvenile court, there is no indication in the record that Father was aware of the internal inconsistency in the written order at the time of the hearing. Indeed, given the Department's discovery of the inconsistency a week after the order was issued, it appears unlikely that any of the parties had the written order before them at the time of the July 28, 2003 hearing (or when Father filed his notice of appeal on that day). In any event, even if Father had been aware of the inconsistency yet failed to raise it in the juvenile court, we may—and in this case we must—nevertheless reverse an order that is void for uncertainty. (See, e.g., *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417.) The July 28 order is reversed insofar as it addresses Father's visitation rights and the matter is remanded to the juvenile court to hold a hearing for the purpose of entering a new visitation order.

C. *Jurisdiction Was Properly Terminated*

Father also argues on appeal that the July 28 order must be reversed because the juvenile court abused its discretion when it terminated juvenile court jurisdiction. We disagree.

There appears to be a split of authority regarding the standard of review to apply when reviewing orders terminating juvenile court jurisdiction. In *In re Robert L.* (1998) 68 Cal.App.4th 789, Division Four of the Second Appellate District applied an abuse of discretion standard of review to an order terminating juvenile court jurisdiction. (*Id.* at p. 794.) Division One of the Fourth Appellate District, however, applied a substantial evidence standard of review to a termination order in *In re N.S.* (2002) 97 Cal.App.4th 167. (*Id.* at p. 172.) We need not determine which standard of review should be applied because the juvenile court's termination of jurisdiction in this case was proper under either standard.

This case is governed by section 364 because N.H. was not removed from her mother's physical custody. (See § 364, subd. (a); *In re Natasha A.* (1996) 42 Cal.App.4th 28, 35.) Section 364 provides that the juvenile court, after hearing any evidence presented by the social worker or the child or the child's parents or guardians, must determine whether continued supervision is necessary. The court is *required* to terminate its jurisdiction unless it is established by a preponderance of evidence that "the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (§ 364, subd. (c); see also *In re N.S.*, *supra*, 97 Cal.App.4th at p. 173.) Termination of jurisdiction "is not conditioned on the completion of any court services." (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1502, disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196.) Moreover, the juvenile court may conclude that continued supervision is not necessary for the child's protection premised upon the existence of custody and visitation orders that restrict unmonitored visitation by an offending parent. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 204.)

In the present case, the juvenile court assumed jurisdiction over N.H. because Mother and Father failed to protect her from exposure to domestic violence. Father's attorney conceded that there no longer was a risk of domestic violence. Moreover, when it terminated jurisdiction, the juvenile court ordered that Mother have sole physical and legal custody of N.H. and there was substantial evidence that Mother was able to take care of and protect N.H. Finally, the juvenile court attempted to fashion a visitation order that would protect N.H. from harm; although that order has been reversed because of the internal inconsistency, that inconsistency can be corrected by the juvenile court on remand to restrict Father's visitation as necessary to protect N.H.⁵ Therefore, the juvenile court did not abuse its discretion by terminating jurisdiction over N.H.

⁵ There is no authority to suggest that even though the juvenile court's jurisdiction was terminated, it cannot correct an order it made.

DISPOSITION

The July 28, 2003 order is reversed to the extent it relates to visitation, and the matter is remanded to the juvenile court to hold a hearing to clarify its visitation order. In all other respects, the July 28, 2003 order is affirmed.

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MOSK, J.

We concur:

TURNER, P.J.

ARMSTRONG, J.